

# STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: All Political Subdivisions  
FROM: Micah G. Vincent, Commissioner *MGV*  
RE: Review of Excess Levy Appeals  
DATE: July 16, 2013

## DEMONSTRATING NEED IN EXCESS LEVY APPEALS

### Introduction

This memorandum informs civil taxing units (meaning every taxing unit except school corporations) of the criteria the Department of Local Government Finance ("Department") uses in determining whether a civil taxing unit ("unit") is eligible for an excess maximum levy appeal ("appeal"). Indiana Code 6-1.1-18.5-12 allows a qualified unit to appeal to the Department for relief from its levy limitations after the unit has determined that it cannot carry out its governmental functions under those levy limitations for the ensuing calendar year. The Department must then examine the merits of the unit's claim.

Appeals are fact-sensitive inquiries. Indiana Code 6-1.1-18.5-12(a)(2) requires a unit to support its claim for an appeal with reasonably detailed statements of fact. In evaluating the merit of an appeal, the Department takes a "need-based" approach based on the information presented and the prescriptions of the Indiana Code.

However, the Department generally will not approve an appeal if doing so gives the unit a fund balance of 10% or more (in other words, the excess of cash and investments exceeds liabilities and obligations by 10% or more).

If an appeal is approved, the appeal amount is incorporated prior to certification of budgets, tax rates, and levies for the unit.

### General Factors Evaluated by the Department

The Department may consider the following factors in reviewing an appeal:

- (1) What is the percent increase of the rate due to the appeal?
- (2) What is the percent increase of the levy due to the appeal?
- (3) What is the appeal impact per capita?
- (4) Is the taxing unit affected by circuit breaker credits?
- (5) Will the appeal create a circuit breaker credit?

- (6) Has the unit experienced levy excess in the recent years?
- (7) What is the taxing unit's history of excess levy appeals?
- (8) Is the unit located in a TIF district?
- (9) Does the unit have a balance in its rainy day fund? If so, how much?
- (10) Does the unit plan to transfer surpluses in the current year to its rainy day fund? If so, how much?<sup>1</sup>
- (11) What is the unit's fund balance as a percent of its budget?
- (12) What will be the effect on the unit if the appeal is denied?
- (13) If the appeal is for a correction of an error, what is the error?
- (14) If the appeal is due to an emergency, what is the emergency?
- (15) If the appeal is due to an annexation, consolidation, or extension of services, how many additional persons will the unit serve?
  - a. What is the expected increase in assessed value?
  - b. What will be the impact of the income and excise tax distribution?
- (16) If the appeal is due to an annexation, does the amount of the appeal reflect the fiscal plan as originally submitted? Would the percent increase in maximum levy mirror the percent increase in assessed value?
- (17) Was there opposition or objection to the appeal?
- (18) What was the vote by the fiscal body approving the appeal?
- (19) Was the appeal advertised with the ensuing year's budget advertisement?
- (20) Is the appeal a permanent or temporary increase to the maximum levy?

Appeals are not allowed to recover losses due to circuit breaker credits. When a unit reaches a circuit breaker threshold, increasing property tax rates and levies will only reduce revenues to other governmental units.

### Types of Appeals

Indiana Code 6-1.1-18.5 permits the Department to provide relief for the following types of claims:

- (1) Annexation, consolidation, or extension of services.
- (2) Three-year growth factor exceeding 2% of the state-wide average.
- (3) Correction of advertising errors, mathematical errors, or errors in data.
- (4) Shortfall due to erroneous assessed valuation.
- (5) Emergency.

Indiana Code 6-1.1-18.5-13(c) allows a township to petition the Department for an increase to its maximum levy due to borrowing for fire and emergency services under IC 36-6-6-14 in either 2012 or 2013, but not both.

### Annexation, Consolidation, or Extension of Services

Indiana Code 6-1.1-18.5-13(a)(1) allows a unit to seek an increase in its maximum levy to pay additional costs for providing services to newly annexed or consolidated areas or for extending governmental services to additional geographic areas or persons. In other words, this appeal is

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<sup>1</sup> Indiana Code 36-1-8-5.1 has been amended so that a transfer made to a rainy day fund cannot be made from a debt service fund. This amendment was effective July 1, 2013.

intended to assist cities and towns in accommodating growth in land area, growth in population, or consolidation of governments.

The Department evaluates the merits of an annexation, consolidation, or extension of services appeal based on the nature of the services being provided. Specifically, the Department looks at both the costs associated with providing the services to the area and the timeframe by which those services are extended into the new area.

In evaluating the costs the unit alleges it will incur due to the annexation, consolidation, or extension of services, the Department pays particular attention to the proportionality of the unit's proposed percent increase in maximum levy to the percent increase in the unit's assessed value following the annexation, consolidation, or extension of services. In other words, if a unit's assessed value increases by 20% due to an annexation, the Department would expect to see the unit's maximum levy increase by no more than approximately 20%. Implicit in the statutory provision that the Department determine whether a maximum levy increase is "reasonably necessary due to increased costs of the civil taxing unit resulting from annexation, consolidation, or other extensions of governmental services" is the notion that an increase in a unit's maximum levy should rationally mirror the expenses incurred through the annexation, consolidation, or extension of services, and that the expenses are sensible and credible. An appeal calling for a 40% increase in a unit's maximum levy when the unit's assessed value increased by only 20% due to an annexation would be a cause for concern. To justify an increase in its maximum levy, an appealing unit must demonstrate that the area it is annexing or into which it is extending services will actually be receiving new benefits and services it was not previously receiving.

The Department notes that an annexing unit is entitled to either an automatic increase in its maximum levy of up to 15% pursuant to IC 6-1.1-18.5-13(a) (Version b) or an appeal awarded by the Department, but not both. If a unit increases its assessed value through annexation by more than 15%, the unit potentially qualifies for an increase in its maximum levy through an appeal that is greater than would be the automatic adjustment of up to only 15% provided by IC 6-1.1-18.5-13(a) (Version b).

A unit seeking an annexation, consolidation, or extension of services appeal must submit the following information to the Department for review:

- (1) The time frame of annexations, extensions, or consolidations to be considered.
- (2) Any levy increases granted for each budget year within the time frame of annexation, extension, or consolidation.
- (3) The types of services that will be needed and/or increased due to annexation, extension, or consolidation.
- (4) The increased expenses due to annexation, extension, or consolidation for each year.
- (5) The appeal amount requested, determined by the following:
  - a. The total amount of the appeal, supported by evidence of increased expenses, less the levy increases granted in the years of annexation, extension, or consolidation; divided by
  - b. The total number of years of annexation, extension, or consolidation.
- (6) Whether the total amount requested matches the amount in the fiscal plans for each annexation, extension, or consolidation.
- (7) Whether the unit transferred funds to its rainy day fund during the budget year or the immediately preceding budget year and:

- a. if it did, the amount and the fund from which the transfer was made; or
- b. if it did not, whether the unit plans to transfer funds to its rainy day fund in the near future. If the unit plans to transfer funds, what is the anticipated amount?

### **Three-Year Growth**

Indiana Code 6-1.1-18.5-13(a)(3) permits a unit to seek an appeal if its average assessed value growth quotient ("AVGQ") over the last three years exceeds the statewide AVGQ by at least 2%. The amount, if any, of an appeal for which a unit may be eligible is determined by the following formula:

**Step 1:** Determine the unit's certified assessed valuation for the last four years.

**Step 2:** Calculate the assessed value growth for each of the last three years.

**Step 3:** Calculate the AVGQ by taking the sum of the results of Step 2 and dividing by three.

**Step 4:** Determine the statewide certified assessed value for the last four years.

**Step 5:** Calculate the assessed value growth for each of the last three years.

**Step 6:** Calculate the statewide AVGQ by taking the sum of the results of Step 5 and dividing by three.

**Step 7:** Divide the Step 3 amount by the Step 5 amount.

For a unit to qualify for the appeal, the Step 7 amount must be equal to or greater than 1.02. The percentage by which an appealing unit's maximum levy is increased will likely mirror the percentage by which the unit's growth exceeds statewide growth.

### **Correction of Advertising Errors, Mathematical Errors, or Errors in Data**

Through a Correction of Error Appeal pursuant to IC 6-1.1-18.5-14, the Department may order a correction of any advertising error, mathematical error, or error in data made at the local level for any calendar year if the Department finds that the error affects the determination of the unit's maximum levy, tax rates, or tax levies. The unit must state what type of error occurred and the amount of the error that should be considered by the Department. The unit should provide documentation showing that a specific error actually occurred. Requests for consideration of errors that *may* occur will not be considered.

Most critically, because this appeal contemplates errors involving advertising or mathematical calculations, the Department will not consider appeals seeking to correct a unit's past *policy* decisions. In other words, if in a year a unit voluntarily reduces its maximum levy but subsequently regrets this decision, this is not an error as contemplated by IC 6-1.1-18.5-14 and thus would not qualify for a Correction of Error Appeal. The Department will vigorously enforce this policy.

A requested correction should not be related to refunds or errors made and/or corrected due to assessment appeals. These types of "errors" are calculated via the Shortfall Due to Erroneous Assessed Valuation appeal.

Please note that IC 6-1.1-17-1 requires the certified statement from each county auditor to the Department to contain "for counties with taxing units that cross into or intersect with other counties, the assessed valuation as shown on the most current abstract of property." This legislative change was intended to address situations where a county has submitted its assessed values to the Department but a neighboring county sharing a cross-county taxing unit has failed to submit assessed values to the Department. The effect of this statute does not constitute an error as contemplated by IC 6-1.1-18.5-14.

### **Shortfall Due to Erroneous Assessed Valuation**

Under IC 6-1.1-18.5-16, a unit may seek an appeal due to a shortfall of property taxes resulting from erroneous assessed value or refunds for successful assessment appeals. This appeal is available only when the shortfall affects funds that fall within the maximum levy. *Anticipated* shortfalls based on current year distributions will not be considered unless a unit can prove extreme financial hardship. This is a temporary appeal, meaning that an approved increase in maximum levy is effective for one year only.

The unit must do the following as part of its appeal to the Department:

- (1) State which budget year(s) experienced a shortfall.
- (2) Describe in detail what caused the error(s) in assessed value and the dollar amount associated with the error(s).
- (3) List the unit's district numbers, per the auditor's reports, and calculate the sum of the following:
  - a. Total District Net Amount from the 127-CER Report.
  - b. Total District Net Amount from the 17-TC Report.
  - c. Total District Net Errors and Refunds Issued.
- (4) Subtract the actual distribution and the circuit breaker from the certified levy of each fund (excluding debt and cumulative funds).
- (5) If the unit received a levy excess in the past three years, state the taxing year(s) and amount(s).
- (6) Whether the unit transferred funds to its rainy day fund during the budget year or the immediately preceding budget year and:
  - a. if it did, provide the amount and the fund from which the transfer was made; or
  - b. if it did not, whether the unit plans to transfer funds to the rainy day fund in the near future. If the unit plans to transfer funds, what is the anticipated amount?
- (7) Whether the unit has a fund balance of 10% or more of its annual budget before the transfer to its rainy day fund. If yes, give the percent of the fund balance.

The unit must state with specificity the cause of the shortfall and provide the following:

- (a) County Form 127CER (Register of Certificates of Error) for the year(s) in which the shortfall occurred for each taxing district of which the unit is a taxing entity;
- (b) County Form 17TC (Certificate of County Auditor of Tax Refund Claims) for each taxing district of which the unit is a taxing entity. Refunds must clearly indicate the assessment year for which the refund is claimed; and
- (c) County Form 22 (County Auditor's Certificate of Tax Distribution) for each year the unit is claiming a property tax shortfall.

Failure to provide the necessary documents may result in denial of the appeal. Please note that this appeal is calculated for the amount of a unit's portion of errors and refunds and does not include delinquent payments or circuit breaker shortfalls. These amounts will not be included in the calculation of actual shortfall experienced. Again, debt funds and cumulative funds do not qualify for this appeal.

### **Emergency Levy Appeal**

Pursuant to IC 6-1.1-18.5-13(a)(13), a unit may seek an increase in its maximum levy if it cannot carry out its governmental functions for an ensuing year due to a natural disaster, accident, or other unanticipated emergency. A unit must describe the underlying emergency giving rise to the appeal. The Department does not consider a generally poor local or national economy to be an unforeseen emergency. This is a temporary appeal.

A unit submitting an emergency appeal must document the following:

- Description of emergency.
- Demonstrated increased services.
- Demonstrated financial need.
- Detailed, reasonable administrative overhead for the current year.

The Department may consider other factors it deems relevant when evaluating such requests.

A township may apply for an emergency appeal due to an unanticipated emergency increasing the amount of township assistance requests. The following criteria are used to evaluate township requests (please respond to each factor to be considered):

- Description of emergency.
- Demonstrated increased services. The township, using TA-7 data from the past ten years, must show that more applicants have applied and more relief has been given this year than in past years. Include copies of the TA-7 forms for the past ten years with the application.
- Demonstrated financial need. The township must provide financial information to demonstrate that the township assistance budget and all useable cash balances and other township assets have been exhausted.
- Detailed, reasonable administrative overhead for the current year. The Department compares the direct assistance provided and the total disbursements from the township assistance fund. The Department will ensure that a significant portion of the disbursements were for direct assistance.

The Department may consider other factors it deems relevant when evaluating such requests.

Again, pervasive unemployment or poverty resulting from a generally weak local or national economy will not be treated as an emergency. A unit will have to point to a specific occurrence, such as a tornado, flood, or the sudden closure of the unit's sole or primary private employer to qualify for an Emergency Appeal.

### **Township Fire Protection Appeal**

House Enrolled Act 1116-2013 ("HEA 1116"), signed by Governor Mike Pence on May 9, 2013, amends IC 6-1.1-18.5-13(c) to establish procedures for a township to increase its maximum levy for purposes of providing fire protection. In calendar year 2013, the Department must allow a township to increase its maximum permissible ad valorem property tax levy in excess of the limitations established under IC 6-1.1-18.5-3 if the township:

- (1) petitions the Department for the levy increase on a form prescribed by the Department; and
- (2) submits proof of the amount borrowed in 2012 or 2013, but not both, under IC 36-6-6-14 to furnish fire protection for the township or a part of the township.

The maximum increase in a township's levy that may be allowed is the amount borrowed by the township under IC 36-6-6-14 in the year for which proof was submitted. An increase allowed applies to property taxes first due and payable after December 31, 2013. Those townships that receive a maximum levy increase and that borrow money to repay the IC 36-6-6-14 loan can repay the borrowed money in three installments in each of 2014, 2015, and 2016. Those three installments are outside the township's maximum levy.

*EXAMPLE: Township A has a fire max levy of \$1 million. In 2013, it borrows \$600,000 under IC 36-6-6-14. Township A may petition the DLGF for an increase to this maximum levy in the amount of \$600,000 for "property taxes first due and payable after December 31, 2013" (meaning Pay 2014 and beyond). If Township A borrows money to repay the \$600,000, it may repay the borrowed money in three installments of \$200,000 in each of 2014, 2015, and 2016. These installments will be outside the township's maximum levy.*

### **School Transportation Appeal**

Although a school transportation fund-related appeal is not a traditional maximum levy appeal governed by IC 6-1.1-18.5, it is addressed in this memorandum because it does involve an increase to a school's transportation fund maximum levy. Please review the Department memorandum entitled, "School Transportation Excess Levy Appeal" for more information about this appeal.

A school corporation may appeal to the Department to increase the maximum levy permitted for its transportation fund under IC 20-46-4. The Department has the authority under IC 6-1.1-19 to revise, change, or increase the budget, tax rate, or tax levy of the school corporation. To be granted an increase, the school corporation must establish that the increase is necessary because of a transportation operating cost increase of at least 10% over the preceding year as a result of at least one of the following:

- (1) A fuel expense increase.
- (2) A significant increase in the number of students enrolled in the school corporation that need transportation or a significant increase in the mileage traveled by the school corporation's buses compared with the previous year.
- (3) A significant increase in the number of students enrolled in special education who need transportation or a significant increase in the mileage traveled by the school corporation's buses due to students enrolled in special education as compared with the previous year.
- (4) Increased transportation operating costs due to compliance with a court ordered desegregation plan.
- (5) The closure of a school building within the school corporation that results in a significant increase in the distances that students must be transported to attend another school building.

In addition, before the Department may grant a transportation maximum levy increase, the school corporation must establish that it will be unable to provide transportation services without an increase. The Department may grant an increase that is less than the increase requested by the school corporation.

If the Department determines that a permanent increase in the transportation maximum levy is necessary, the maximum levy after the increase becomes the school corporation's maximum levy.

#### **CONTACT INFORMATION**

Questions may be directed to Staff Attorney Michael Duffy at (317) 233-9219 or [mduffy@dlgf.in.gov](mailto:mduffy@dlgf.in.gov).